IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No: 2772 of 2005

Between:

1 The Principal Secretary to Government of AP.,
Revenue (Excise) Dept., Secretariat Building, Hyderabad.
2 The Commissioner of Prohibition and Excise,
Government of AP., Hyderabad.
3 The Deputy Commissioner of Prohibition and Excise, Guntur.
4 The Prohibition and Excise Superintendent, Guntur.

..... PETITIONERS

AND

Sri T.Babu Rajendra Prasad, Junior Assistant Formerly
O/o the Prohibition & Excise Superintendent, Guntur,
Presently working as Prohibition & Excise Sub Inspector
(in-charge) at Vinjamoor of Nellore District.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or Director more particularly one in the nature of Writ of "Certiorari" and calling for the records relating to the order passed in OA.No.10797/2002 dt. 28/09/2004 on the file of the Hon'ble A.P. Administrative Tribunal, Hyderabad and quash the same as illegal, arbitrary and pass such other

order or orders as deemed fit and proper in the circumstances of the case.

Counsel for the Petitioners: GP FOR SERVICES II

Counsel for the Respondent: MR.B.RANGANATHA RAO.

The Court at the admission stage made the following:

ORAL ORDER:- (PER GB,J.)

The Writ Petition is filed by the Government challenging the order, dated 28.09.2004, passed by the A.P. Administrative Tribunal in O.A.No.10797 of 2002.

2. The matter relates to fixation of proper seniority of the respondent in the cadre of Junior Assistant in the Excise Department. The Andhra Pradesh Public Service Commission made regular recruitment to the post of Junior Assistant/Village Secretary in the Revenue Department in the year 1980-81. The respondent was selected and he was allotted to Guntur District. However, the Collector, Guntur, initially allotted the respondent to the Education Department and thereafter, he was finally allotted to the Excise Department where he joined the post on 09.04.1987. Thereafter, seniority list in the cadre of Junior Assistants in Excise Department, Guntur, was prepared on 22.05.1999 in which the name of the respondent had figured at Sl.No.45. Therefore, the respondent made an objection stating that he should have been placed at Sl.No.27 and not at 45, but however, his objection was overruled and the Superintendent of Excise rejected the said objection on 21.10.1999. Thereafter, he filed an appeal to the appellate authority and the same was also rejected on 07.10.2002. Aggrieved by the said rejection order, he filed O.A. No.10797 of 2002.

3. The learned Tribunal, after considering the matter, allowed the O.A. and directed the authorities to re-fix the seniority of the respondent herein on the basis of merit list prepared by APPSC in the cadre of Junior Assistants, against which the present Writ Petition has been filed.

4. Learned Government Pleader submits that the respondent cannot have the

seniority from the date on which he was not appointed. In fact the respondent had reported for duty on 09.04.1987, and therefore, his seniority will count only from 09.04.1987 and he cannot supersede other persons who were appointed prior to 1987.

5. Per contra, learned counsel for the respondent submits that the respondent was in fact selected in the selection made by APPSC in the year 1980-81 and he was recruited for Revenue Department, and as there was delay in recruitment, he was sent to Education Department, which did not accept him on the ground that there were no vacancies. Ultimately, he was allotted to Excise Department where he joined on 09.04.1987. In such a situation, the juniors to the respondent in the panel were regularized earlier to his regularization, and therefore, his seniority shall count from the date of regularization of his immediate junior candidate in the merit list prepared by APPSC in the year 1980-81, and therefore, the order of the Tribunal cannot be said to be illegal and contrary to law.

6. We have considered the respective contentions raised by both the counsel.

7. The Tribunal has taken into consideration, the merit list prepared by APPSC in the year 1980-81 and observed that simply because the respondent herein was sent to Excise Department, his seniority cannot be overlooked with reference to the merit list prepared by APPSC for the year 1980-81. The Tribunal discussed this issue in the following paragraph.

> "Heard the learned counsel for the applicant and the G.P.
>
> The facts and circumstances mentioned in the counter affidavit filed by the respondents clearly show that there are no latches on the part of the applicant. Admittedly, the provisional seniority list was issued only in the year 1999. Therefore, the applicant was in no position to know where he stood in the seniority list of Jr. Assts., in the unit in which he was appointed. As clearly admitted in the counter, immediately upon the issue of the provisional seniority list, the applicant filed his representation, which was rejected. The applicant again filed an appeal against the rejection and the same was ultimately rejected only in 2003. What has been challenged by the applicant in this case is an order of the 2nd respondent dt.7.10.2002. In the said proceedings, the request of the applicant for considering his case for re-fixing

his seniority was rejected. However, the respondents state in their counter that ultimately based on the memo No.6850/Ex.I(2)/003-1 dt.5.3.2003 of the first respondent wherein it was stated that all direct recruits were given seniority only from the date of joining in the department, the request of the applicant vide his appeal dt.14.11.2002 is not feasible. The respondents claim that having kept quiet from the year 1987, the applicant for the first time made a representation in the year 2002 with regard to re-fixing the seniority. Having issued a seniority list in the year 1999, they cannot turn back and say that the applicant ought to have claimed seniority in the year 1997 itself. He would have no way of knowing the inter-se seniority vis-à-vis promotees. At best he would have known the seniority along with other direct recruits. Further, it is not open to the respondents to state that the principle applied by the District Collector in respect of the appointees in the Revenue Department in his proceedings dt.4.8.88 are not applicable to the applicant. In fact, the proceedings of the District Collector dt.4.8.88 are placed on a sound footing. It is entirely, the fault of the respondents that the applicant was not appointed in the year 1984 when others who were selected along with him were appointed. The inter-se seniority and the candidates allotted by the APPSC have to be determined with reference to the seniority list communicated by the APPSC but not on the basis of their joining. The date of joining will only determine the date from which the pay and allowances of the applicant should be drawn. But it should not have any bearing on the inter-se seniority of the applicant vis-à-vis the other direct recruits selected at the same recruitment as well as promotees/appointees by transfer in the department. The seniority of such of those individuals who rank below the applicant at the same selection process of the APPSC of the year 1981 should determine the date of regularization of the applicant in the cadre of Jr. Assts., in the unit. His seniority shall, therefore, be re-fixed with reference to the date of regularization of the immediate junior of the applicant in terms of the ranking list communicated by the APPSC in the year 1984 to the District Collector, Guntur. On account of such re-fixing of the seniority of the applicant, if any other non direct recruit candidates have to be treated as juniors to the applicant, that would be an inevitable consequence of the correct application of the rule position.

In the facts and circumstances of the case, the O.A. is allowed and the respondents are directed to re-fix the seniority of the applicant based on the above principles. They shall however, follow the requisite procedure, if the settled seniority of any of the others which was in terms of the final seniority list issued by the respondents on 21.10.99 is likely to be adversely effected."

8. Taking into consideration, the submissions made by the learned counsel for the employee-respondent and also the findings recorded by the Tribunal, we do not find any illegality in the order passed by the Tribunal.

9. Accordingly, the Writ Petition is dismissed. No costs.

_____

G. BIKSHAPATHY, J

_____

P.S. NARAYANA, J

Date: 14.03.2005

ES

To

1 The Principal Secretary to Government of AP.,
Revenue (Excise) Dept., Secretariat Building, Hyderabad.
2 The Commissioner of Prohibition and Excise,
Government of AP., Hyderabad.
3 The Deputy Commissioner of Prohibition and Excise, Guntur.
4 The Prohibition and Excise Superintendent, Guntur.

5 The Registrar, A.P. Administrative Tribunal, Hyderabad.

6 2 CCs to the G.P. for Services-II, High Court of A.P., Hyderabad (OUT).

7 2 CD copies

8 1 CC to MR.RANGANADH RAO